

ASSEMBLY BILL NO. 985 (TORRICO)

California Reservists Job Security

PROBLEM

Thousands of California's residents sacrifice time away from their home and family by serving as Reservists for this state. These truly patriotic individuals serve side by side with our nation's military stationed abroad. Unfortunately, in going within harm's reach, some have paid the ultimate price while serving our country.

Regrettably, current law does not appropriately protect the job for those who are fortunate enough to return home. If a Reservist's job is outsourced while serving, that individual is left with out a job indefinitely.

This bill aims to correct the maltreatment of our state's military service men and women. It requires employers to pay any employee that is not reinstated upon return from active duty an amount equal to six-months salary at the rate that was paid immediately preceding the time off, when the job is outsourced.

EXISTING LAW

The law provides that employers may not discharge or in any manner discriminate against specified employees. However, it does not require employers to compensate individuals on military leave whose job is outsourced.

SUMMARY

This bill would prohibit an employer discharging or discriminating against an employee for taking time off to perform active military duty as a member of the militia of this state.

In addition to any other penalty imposed by law, an employer shall pay any employee that is not reinstated upon return from active duty an amount equal to six-months salary at the rate that was paid immediately preceding the time off, if his or her job is outsourced. An employer is exempt from this bill if they re-instate the employee in a job substantially similar in duties and is paid an amount equal to or greater than preceding time off.

SUPPORT

- National Guard Association of California
- South Bay Labor Council
- California Labor Federation
- California School Employees Association
- California State Commanders Veterans Council

STATUS

- Introduced February 18, 2005
- Do Pass Labor and Employment 6-1
- Do Pass Appropriations 12-4
- Do Pass Assembly Floor 42 - 26

FOR MORE INFORMATION

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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL**No. 985****Introduced by Assembly Member Torrico**

February 18, 2005

An act to add Section 230.5 to the Labor Code, relating to labor.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as introduced, Torrico. Labor: military duty.

Existing law provides that employers may not discharge or in any manner discriminate against specified employees.

This bill would prohibit an employer discharging or discriminating against an employee for taking time off to perform active military duty as a member of the militia of this state, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 230.5 is added to the Labor Code, to
2 read:
3 230.5. (a) No employer shall discharge or in any manner
4 discriminate against an employee for taking time off to perform
5 active military duty as a member of the militia of this state prior
6 to January 1, 2011.
7 (b) This section shall not apply if the job held by the employee
8 upon return from leave no longer exists. However, this section
9 shall apply if the reason the job no longer exists is that the job
10 was outsourced.
11 (c) For purposes of this section, "outsourced" means the job
12 was replaced by a job located outside of the United States that

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1 involves substantially similar duties or activities as the replaced
2 job. It shall be presumed that the first jobs outsourced were the
3 jobs held by employees described in subdivision (a).

4 (d) In addition to any other penalty imposed by law, an
5 employer shall pay any employee that is not reinstated upon
6 return from active duty an amount equal to six-months salary at
7 the rate that was paid immediately preceding the time off.

8 (e) Notwithstanding any other law to the contrary, any
9 amounts payable to the employee pursuant to the Unemployment
10 Insurance Code as a result of not being reinstated shall be
11 reduced by the amount of payments received pursuant to
12 subdivision (d).

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005-06 REGULAR SESSION

ASSEMBLY BILL

No. 985

Introduced by Assembly Member Torrico

February 18, 2005

An act to add Section 230.5 to the Labor Code amend Section 394 of the Military and Veterans Code, relating to labor.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Torrico. Labor: military duty.

Existing law provides that employers may not discharge or in any manner discriminate against specified employees.

This bill would prohibit an employer discharging or discriminating against an employee for taking time off to perform active military duty as a member of the militia of this state, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 230.5 is added to the Labor Code, to~~
2 ~~read:~~
3 *SECTION 1. Section 394 of the Military and Veterans Code is*
4 *amended to read:*
5 394. (a) No person shall discriminate against any officer,
6 warrant officer or enlisted member of the military or naval forces
7 of the state or of the United States because of that membership.
8 No member of the military forces shall be prejudiced or injured
9 by any person, employer, or officer or agent of any corporation,
10 company, or firm with respect to that member's employment,

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1 position or status or be denied or disqualified for employment by
2 virtue of membership or service in the military forces of this state
3 or of the United States.

4 (b) No officer or employee of the state, or of any county, city
5 and county, municipal corporation, or district shall discriminate
6 against any officer, warrant officer or enlisted member of the
7 military or naval forces of the state or of the United States
8 because of that membership. No member of the military forces
9 shall be prejudiced or injured by any officer or employee of the
10 state, or of any county, city and county, municipal corporation, or
11 district with respect to that member's employment, appointment,
12 position or status or be denied or disqualified for or discharged
13 from that employment or position by virtue of membership or
14 service in the military forces of this state or of the United States.

15 (c) No person shall prohibit or refuse entrance to any officer or
16 enlisted member of the Army or Navy of the United States or of
17 the military or naval forces of this state into any public
18 entertainment or place of amusement or into any of the places
19 described in Sections 51 and 52 of the Civil Code because that
20 member wears the uniform of the organization to which he or she
21 belongs.

22 (d) No employer or officer or agent of any corporation,
23 company, or firm, or other person, shall discharge any person
24 from employment because of the performance of any ordered
25 military duty or training or by reason of being an officer, warrant
26 officer, or enlisted member of the military or naval forces of this
27 state, or hinder or prevent that person from performing any
28 military service or from attending any military encampment or
29 place of drill or instruction he or she may be called upon to
30 perform or attend by proper authority; prejudice or harm him or
31 her in any manner in his or her employment, position, or status
32 by reason of performance of military service or duty or
33 attendance at military encampments or places of drill or
34 instruction; or dissuade, prevent, or stop any person from
35 enlistment or accepting a warrant or commission in the California
36 National Guard or Naval Militia by threat or injury to him or her
37 in respect to his or her employment, position, status, trade, or
38 business because of enlistment or acceptance of a warrant or
39 commission.

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1 (e) *In addition to any other applicable laws, no employer shall*
2 *discharge or in any manner discriminate against an employee for*
3 *taking time off to perform active military duty as a member of the*
4 *militia of this state prior to January 1, 2011.*

5 (1) *This subdivision shall not apply if the job held by the*
6 *employee upon return from leave no longer exists. However, this*
7 *subdivision shall apply if the reason the job no longer exists is*
8 *that the job was outsourced.*

9 (2) *For purposes of this subdivision, "outsourced" means the*
10 *job was replaced by a job located outside of the United States*
11 *that involves substantially similar duties or activities as the*
12 *replaced job. It shall be presumed that the first jobs outsourced*
13 *were the jobs held by employees described in subdivision (e).*

14 (3) *In addition to any other penalty imposed by law, an*
15 *employer shall pay any employee that is not reinstated upon*
16 *return from active duty an amount equal to six-months salary at*
17 *the rate that was paid immediately preceding the time off.*

18 (4) *Notwithstanding any other law to the contrary, any*
19 *amounts payable to the employee pursuant to the Unemployment*
20 *Insurance Code as a result of not being reinstated shall be*
21 *reduced by the amount of payments received pursuant to*
22 *paragraph (3).*

23 (f) (1) *No private employer or officer or agent of any*
24 *corporation, company, or firm, or other person, shall restrict or*
25 *terminate any collateral benefit for employees by reason of an*
26 *employee's temporary incapacitation incident to duty in the*
27 *National Guard or Naval Militia. As used in this subdivision,*
28 *"temporary incapacitation" means any period of incapacitation of*
29 *52 weeks or less.*

30 (2) *As used in this subdivision, "benefit" includes, but is not*
31 *limited to, health care which may be continued at the employee's*
32 *expense, life insurance, disability insurance, and seniority status.*

33 ~~(f)~~

34 (g) *No person who provides lending or financing shall*
35 *discriminate against any person with respect to the terms of a*
36 *loan or financing, including, but not limited to, the finance*
37 *charge, based on that person's membership in the military or*
38 *naval forces of this state or of the United States.*

39 ~~(g)~~

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1 (h) Any person violating this section is guilty of a
2 misdemeanor. In addition, any person violating any of the
3 provisions of this section shall be liable for actual damages and
4 reasonable attorney's fees incurred by the injured party.

5 ~~(h)~~

6 (i) The remedies provided for in this section are not intended
7 to be exclusive but are in addition to the remedies provided for in
8 other laws, including Sections 51 and 52 of the Civil Code.

9 ~~230.5. (a) No employer shall discharge or in any manner~~
10 ~~discriminate against an employee for taking time off to perform~~
11 ~~active military duty as a member of the militia of this state prior~~
12 ~~to January 1, 2011.~~

13 ~~(b) This section shall not apply if the job held by the employee~~
14 ~~upon return from leave no longer exists. However, this section~~
15 ~~shall apply if the reason the job no longer exists is that the job~~
16 ~~was outsourced.~~

17 ~~(c) For purposes of this section, "outsourced" means the job~~
18 ~~was replaced by a job located outside of the United States that~~
19 ~~involves substantially similar duties or activities as the replaced~~
20 ~~job. It shall be presumed that the first jobs outsourced were the~~
21 ~~jobs held by employees described in subdivision (a).~~

22 ~~(d) In addition to any other penalty imposed by law, an~~
23 ~~employer shall pay any employee that is not reinstated upon~~
24 ~~return from active duty an amount equal to six months salary at~~
25 ~~the rate that was paid immediately preceding the time off.~~

26 ~~(e) Notwithstanding any other law to the contrary, any~~
27 ~~amounts payable to the employee pursuant to the Unemployment~~
28 ~~Insurance Code as a result of not being reinstated shall be~~
29 ~~reduced by the amount of payments received pursuant to~~
30 ~~subdivision (d).~~

AB 985 Assembly Bill - History

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 985

AUTHOR : Torrico

TOPIC : Labor: military duty.

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY

2005

Apr. 21 From committee: Do pass, and re-refer to Com. on APPR.

Re-referred. (Ayes 6. Noes 1.) (April 20).

Apr. 6 Re-referred to Com. on L. & E.

Apr. 5 From committee chair, with author's amendments: Amend, and re-refer to Com. on L. & E. Read second time and amended.

Mar. 30 In committee: Hearing postponed by committee.

Mar. 7 Referred to Com. on L. & E.

Feb. 20 From printer. May be heard in committee March 22.

Feb. 18 Read first time. To print.

CURRENT BILL STATUS

MEASURE : A.B. No. 985
AUTHOR(S) : Torrico.
TOPIC : Labor: military duty.
HOUSE LOCATION : ASM
+LAST AMENDED DATE : 04/05/2005

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

LAST HIST. ACT. DATE: 04/21/2005
LAST HIST. ACTION : From committee: Do pass, and re-refer to Com. on APPR.
Re-referred. (Ayes 6. Noes 1.) (April 20).
COMM. LOCATION : ASM APPROPRIATIONS
HEARING DATE : 05/04/2005

TITLE : An act to amend Section 394 of the Military and Veterans
Code, relating to labor.

AB 985 Assembly Bill - Bill Analysis

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Date of Hearing: April 20, 2005

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
Paul Koretz, Chair
AB 985 (Torrico) - As Amended: April 5, 2005

SUBJECT : Labor: military duty.

SUMMARY : Prohibits an employer from discharging or discriminating against an employee for taking time off to perform active military duty as a member of the militia of this state, as provided. Specifically, this bill :

- 1) Prohibits an employer from discharging or in any manner discriminating against an employee for taking time off to perform active military duty as a member of the militia of this state prior to January 1, 2011.
- 2) Provides that the prohibition may not apply if the job held by the employee upon return from leave no longer exists, unless the reason the job no longer exists is that the job was "outsourced."
- 3) Defines "outsourced" to mean the job was replaced by a job located outside of the United States that involves substantially similar duties or activities as the replaced job.
- 4) Provides that, in addition to any other penalty provided for by law, an employer shall pay an employee that is not reinstated upon return from active duty an amount equal to six-months' salary at a rate that was paid immediately preceding the time off.

EXISTING LAW :

- 1) Prohibits discrimination against members of the military or naval forces of the state or of the United States based on that membership.
- 2) Prohibits employers from discharging any person from employment because of the performance or ordered military duty or training or by reason of being a member of the military or naval forces of this state.

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AB 985 Assembly Bill - Bill Analysis

FISCAL EFFECT : Unknown

COMMENTS : This bill is sponsored by the National Guard Association of California.

According to the author, thousands of California's residents sacrifice time away from their home and family by serving as Reservists for this state. These individuals serve side by side with our nation's military stationed abroad and are placed within harm's reach. Unfortunately, some have paid the ultimate price while serving our country.

According to the author, current law does not adequately protect the jobs of those who are fortunate enough to return home. If the Reservist's job is outsourced while serving, that individual is left without a job indefinitely.

The author contends that this bill aims to correct the mistreatment of our state's military service men and women by requiring employers to pay an employee that is not reinstated upon return from active duty an amount equal to six months' salary.

Supporters, including the California Labor Federation, AFL-CIO, argue that the men and women of our armed forces deserve to have their jobs waiting for them upon return from active duty. If an employer is unwilling to do that, or outsources the job of an employee who is putting their life at risk to protect the United States, then the compensation provision included in this bill is a necessary approach to deal with these unscrupulous employers.

REGISTERED SUPPORT / OPPOSITION :

Support

California Labor Federation, AFL-CIO
California School Employees Association
California State Commanders Veterans Council
National Guard Association of California
South Bay AFL-CIO Labor Council

Opposition

None on file.

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Analysis Prepared by : Lorie Erickson / L. & E. / (916)
319-2091

AB 985 Assembly Bill - Vote Information

VOTES - ROLL CALL

MEASURE: AB 985

AUTHOR: Torrico

TOPIC: Labor: military duty.

DATE: 04/20/2005

LOCATION: ASM. L. & E.

MOTION: Do pass and be re-referred to the Committee on Appropriations.
(AYES 6. NOES 1.) (PASS)

AYES

Koretz	Chan	Chu	Klehs
Laird	Leno		

NOES

Houston

ABSENT, ABSTAINING, OR NOT VOTING

Nakanishi